

## Town Council Meeting: 14 May 2012



Town of Garrett Park  
PO Box 84  
4600 Waverly Avenue  
Garrett Park, MD 20896

Regular Meeting of Town Council  
Garrett Park Town Hall  
10814 Kenilworth Avenue  
Garrett Park, MD 20896

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### MINUTES

**Call to Order:** Mayor Benjamin called the meeting to order at 7:30 pm. Present were Councilmembers Flynn, Mandel, Petito, Schulp, and Wegner. Also present was Administrator Pratt, Margaret Soltan of the *Bugle*, and a number of Town residents.

**Approval of Agenda:** Councilmember Wegner **MOVED**

That the agenda be approved as posted. The motion was seconded by Councilmember Mandel and was **PASSED** unanimously.

**Presentations by Residents:**

- Garrett Park Conservation Action Network (GPCAN): Garrett Park's Green Initiative: Resident Joanne Schmader briefed the Council on the GPCAN report on recent activities as well as a Green Team Town survey. GPCAN wishes to pursue a Town buildings energy audit and to establish the Town's carbon footprint, in order to provide the basis for the development of an action plan. Ms. Anderson asked that a Council liaison to GPCAN be appointed. Mayor Benjamin noted that the Council would meet Tuesday night for a work session regarding establishing Councilmember assignments. There was further discussion of the report. Mayor Benjamin thanked GPCAN for their report.
- Resident Liz King thanked the Council for its efforts to preserve the MARC schedule.
- Resident Barbara Collier asked the Council to consider lowering Town Hall rental rates for a yoga class.

**Approval of Minutes:**

- The minutes of the 04/09/2011 Regular Council Meeting were approved as distributed without objection.

**Action:**

- Amended Ordinance 2011-05: Amending Sections 402 and 403 of the Garrett Park Code – Mayor Benjamin opened discussion by recommending that the version of the ordinance that had been sent to the County Council be introduced as the basis for amendment, and that the annotated version reflecting the most recent work session and proposed changes by various commenters be used for review by the Council.

Councilmember Petito **MOVED**

That Amended Ordinance 2011-05 be introduced in the form that had been forwarded to the Montgomery County Council for comment, and that the required public hearing be set for the next regular Council meeting on June 11<sup>th</sup>. Councilmember Wegner seconded the motion. Mayor Benjamin then asked for comment from Setback Advisory Committee (SAC) Chair Harry Gordon and former Mayor Chris Keller. Extended discussion ensued concerning the annotated draft, with the Council indicating its preferences regarding recommended modifications. Mayor Benjamin stated that he was taking careful notes and would prepare a revised version of the ordinance reflecting the Council's proposed changes. Mayor Benjamin then called for a motion to amend the motion on the floor to include the changes agreed to by the Council.

Councilmember Flynn **MOVED**

That the motion to introduce Ordinance 2011-05 be amended to include the amendments that the Council had agreed to, and that Mayor Benjamin be authorized to prepare the modified ordinance reflecting these changes. Councilmember Schulp seconded the motion, which was **PASSED** unanimously. Mayor Benjamin then called for a vote on the motion to amend the motion to introduce Ordinance 2011-05 including the amendments just passed, which was **PASSED** unanimously. A copy of the amended ordinance is attached to these minutes.

**Town Administrator Report:**

- Town Administrator Pratt reviewed the Monthly Budget Report with the Council, updated the Council on the status of the various on-going capital projects, and distributed the Active Permits Report.

**Adjournment:** The meeting adjourned at 9:00 PM.

Respectfully Submitted,

[TOWN SEAL]

*Edwin Pratt, Jr.*

Edwin Pratt, Jr., Clerk-Treasurer

## **Town of Garrett Park**

Ordinance No.: 2011-05  
Introduced: December 12, 2011  
Introduced as Amended: May 14, 2012  
Adopted: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

WHEREAS, Article 23A, Section 2(a) of the Maryland Code, grants to the legislative body of every incorporated municipality in Maryland, including the Town of Garrett Park, general power to pass such ordinances not contrary to the Constitution of Maryland or public general law as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Section 78-17 of the Charter of the Town of Garrett Park authorizes the Town Council to pass ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town and for such other police or health matters as it may deem necessary; and

WHEREAS, Section 78-17(55) of the Charter of the Town of Garrett Park empowers the Town Council to regulate or restrict size of buildings and other structures, the percentage of lot occupancy, the size of yards, courts and other open spaces, location of buildings, structures, and land for residence or other purposes; and

WHEREAS, Article 28, Section 8-115.1 of the Maryland Code grants to municipal corporations in the Regional District in Montgomery County, such as the Town of Garrett Park, the authority to regulate, among other elements, the construction, repair, erection or remodeling of single family residential houses, buildings or other structures on land zoned for single family residential use, as it relates to, among other things, the location of structures on a property, including setback requirements, the dimensions of structures, including height, bulk, massing and design, and lot coverage, including impervious surfaces; and

WHEREAS, the Town Council established a Land Use Task Force to review the Town's zoning regulations and to make recommendations for proposed amendments of Chapter 4 of the Town Code; and

WHEREAS, the Land Use Task Force conducted several public meetings to receive input from the public and to develop recommendations to the Town Council; and

WHEREAS, the Land Use Task Force issued a report and recommendations dated July 12, 2010; and

WHEREAS, the first draft of this Ordinance was introduced on December 12, 2011; and

WHEREAS, as a result of input from Town residents, the first draft was modified for introduction as amended at the Town Council's May 14, 2012 meeting; and

WHEREAS, the Town Council finds that implementing some of the Land Use Task Force's recommendations would promote the public health, safety and welfare; and

WHEREAS, the Town Council finds that the public health, safety and welfare would be promoted if the provisions of the Town Code are more consistent with the provisions of the Garrett Park Overlay Zone as set forth in Chapter 59 of the Montgomery County Code; and

WHEREAS, to comply with Article 28, Section 8-115.1 of the Maryland Code, on the 11th day of May, 2012, a copy of the following Ordinance (including the amendments contained herein) was submitted to the Montgomery County Council for its comments; and

WHEREAS, no comments on this amended version were received from the Montgomery County Council; and

WHEREAS, after proper notice to the public, and after at least thirty days from the date a copy of the following Ordinance was transmitted to the Montgomery County Council, the Town Council, in public session assembled on the 11th day of June, 2012, conducted a public hearing at which it considered the following Ordinance; and

WHEREAS, the Town Council finds that amendment of Chapter 4 of the Town Code as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing

persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town.

NOW, THEREFORE, the Town Council of the Town of Garrett Park does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND SECTIONS 402 AND 403 OF THE GARRETT PARK TOWN CODE TO CLARIFY THE PURPOSES OF SECTION 402 OF THE TOWN CODE; TO ALLOW CERTAIN EXCEPTIONS FOR PROJECTIONS; TO AMEND CERTAIN SET BACK REQUIREMENTS; TO ADD A FLOOR AREA RATIO RESTRICTION TO SECTION 402; AND TO UPDATE THE PROVISIONS OF SECTION 403

SECTION 1. BE IT ORDAINED AND ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2012, by the Town Council of the Town of Garrett Park, acting under and by virtue of the authority granted to it by Article 23A of the Maryland Code, Article 28, Section 8-115.1 of the Maryland Code, and the Town Charter, that Chapter 4 of the Town Code is hereby amended to read as follows:

Section 402. Building Setback Lines, ~~and~~ Lot Coverage and Floor Area Ratio

(a) Purpose.

(1) To protect the public health, safety and welfare of the Citizens of Garrett Park and, more specifically, to: preserve and protect the lands and improvements within the Town by ensuring that all proposed new construction and alterations to buildings in the Town be compatible with the Town's existing scale, natural topography, vegetation, trees, physical setting, and density of development.

**(1.1) Preserve the unique park-like setting of the 19<sup>th</sup> century garden suburb, maintain the prevailing pattern of houses and open spaces, and retain the maximum amount of green area surrounding new or expanded houses.**

**(1.2) Encourage a compatible relationship between new or expanded houses and neighboring structures in scale, siting, and orientation on the lot.**

**(1.3) Maintain housing diversity and choice by retaining existing housing stock yet allowing a reasonable amount of expansion in living space.**

(2) To establish stricter or additional building **height, bulk, massing, design**, location, setback and lot coverage requirements than those of the current Montgomery County Zoning Ordinance for the construction, repair, erection, or remodeling of houses, buildings, or other structures on land zoned for single-family residential use.

(3) To provide a procedure for a variance from the strict application of the building requirements contained in this section.

**(b) Application and Interpretation. As provided in Article 28 of the Maryland Code, the Montgomery County Zoning Ordinance applies to all property in Garrett Park. In addition, all buildings on land zoned for single-family residential use shall comply with the requirements of this Chapter 4 in effect at the time of the issuance of a Town building permit. If a term used in this Chapter is not defined herein, but is defined in the Montgomery County Zoning Ordinance, it shall have the meaning ascribed to it in the Montgomery County Zoning Ordinance.**

**(b) (c) Setback, ~~and~~ Lot Coverage and Floor Area Ratio** Requirements. All buildings on land zoned for single-family residential use hereafter erected or altered shall adhere **[~~(except as provided in Section 403(d)) to the setback and lot coverage requirements of the Montgomery County Zoning Ordinance and definitions in effect at the time of the application for a building permit, and~~]** to the **[additional]** setback, **[and]** lot coverage **and floor area ratio** requirements set forth below:

(1) Setback from street. No main building or new construction shall be nearer to any street right-of-way than thirty (30) feet.

Additionally,

(1.1) If any adjacent lot is occupied by a main building with a front yard setback greater than this requirement, no main building hereafter erected **and no** addition to an existing main building shall project

beyond the line previously established by the main buildings on the adjacent lots; or

(1.2) If only one adjacent lot is occupied by a main building with a front yard setback greater than this requirement, no main building hereafter erected **and no** addition to an existing main building shall project beyond a line established by the average of the front yard setback of the adjacent main building and thirty (30) feet.

(1.3) Notwithstanding the above, open porches added to structures existing as of ~~the effective date of this ordinance~~ **February 15, 2000** may extend up to eight (8) feet beyond the required front **yard** setback line **and may be roofed**.

(1.4) For the purposes of Section 402~~[(b)]~~ **(c)**(1)(1.1) and 402~~[(b)]~~ **(c)**(1)(1.2) of the Garrett Park Town Code, if the main building on an adjacent lot is set back by greater than 90 (ninety) feet, it shall be considered to be set back by 90 (ninety) feet.

(2) Setback from adjoining lot. No main building on land zoned for single-family residential use shall be nearer to any property line **with an adjoining lot** than the following:

(2.1) **Minimum side yard setback: [Each side setback shall be a minimum of ten (10) feet and the total of the two side setbacks shall be a minimum of forty (40) per cent of the lot width at the front of the main building line.]**

**(a) One side: 10 feet; and**

**(b) Sum of both sides:**

**(i) 25 feet for lots with over 60 feet in width at the front main building line;**

**(ii) 20 feet for lots with 60 feet or less in width at the front main building line.**

(2.2) **Minimum rear yard setback: [The rear setback, from the rear main building line to the rear of the lot, shall be forty (40) feet for a lot one hundred (100) feet in depth, decreased for lots of**

~~smaller depth and increased for lots of greater depth by seventy (70) per cent of the difference between the lot's average depth and one hundred (100) feet.]~~

(a) 25 feet for lots over 90 feet in depth at the location at which the building is closest to the property line;

(b) 15 feet for lots 90 feet or less in depth at the location at which the main building is closest to the property line.

(3) Maximum lot coverage. The maximum percentage of the net lot area that may be covered by a main building is eighteen (18) percent and the maximum percentage of the net lot area that may be covered by main and accessory buildings cumulatively is twenty (20) percent.

~~[(4) Adjustments of setback and lot coverage requirements.~~

~~(4.1) Where applicable, either of the following adjustments may be made in the required setback:~~

~~(4.1.1) If the total side setback requirement is more than twenty-five (25) feet for lots with over sixty (60) feet in width at the main front building line or twenty (20) feet for lots with sixty (60) feet or less in width at the main front building line, it may be reduced to not less than twenty-five (25) feet for lots with over sixty (60) feet in width at the main front building line or twenty (20) feet for lots with sixty (60) feet or less in width at the main front building line provided the resulting reduction in side yard areas is offset by an equivalent increase in the square footage of the rear and/or the front yard areas.~~

~~(4.1.2) If the rear setback requirement is more than twenty-five (25) feet for lots with over ninety (90) feet in depth or more~~



~~than fifteen (15) feet for lots with ninety (90) feet or less in depth, it may be reduced to not less than twenty-five (25) feet for lots with over ninety (90) feet in depth or fifteen (15) feet for lots with ninety (90) feet or less in depth provided the resulting reduction in rear yard area is offset by an equivalent increase in the square footage of the side and/or the front yard areas.~~

~~(4.2) Building setback lines and lot coverage requirements shall be subject to adjustment under Section 403 (Variances) of this Code of Ordinances to the extent necessary to assure that a reasonable net lot area is available for the construction of any additions to the main and accessory buildings.]~~

(4) Floor Area Ratio. The maximum floor area ratio for main plus accessory buildings is .375.

(d) The following exemptions for projections shall apply to the requirements of Sections 402(c) (1) and 402(c) (2).

(1) [(A)] Open roofless steps, stoops, exterior stairways and terraces may extend into any minimum front yard or rear yard setback area by not more than 9 feet.

(B) For lots over 90 feet in depth, open roofless porches and decks may extend into a minimum rear yard setback area by not more than 9 feet, provided that any such feature that is roofed may not extend more than 3 feet into any minimum rear yard setback area.

(2) Open roofed or roofless steps, stoops, exterior stairways, terraces, porches and decks may extend into any minimum side yard setback area not more than 3 feet.

(3) Open, roofed or roofless steps, stoops, exterior stairways and terraces that extend into any minimum

**setback area as permitted under paragraphs (d) (1) and (2) may not extend more than 3 feet into any minimum front yard or rear yard setback area.**

**(4) Any bay window, entrance, vestibule or balcony may project not more than 3 feet into a minimum front yard or rear yard setback area, provided that such feature does not exceed 10 feet in width.**

**(5) Cornices and eaves may project not more than 2 ½ feet over any minimum setback area. This exemption does not apply to cornices and eaves on steps, stoops, exterior stairways, terraces, porches, decks, bay windows, oriel, entrances, vestibules or balconies.**

**(6) Sills, leaders, belt courses, and similar ornamental features may project not more than 6 inches over any minimum setback area.**

**(7) Open, roofless fire escapes, if required by the Montgomery County building code, may project not more than 5 feet over any minimum setback area.**

**(8) Chimneys may project not more than 24 inches into any minimum setback area.**

**(9) Chimneys used as walls may not project into any minimum setback area.**

**(10) Air conditioners and heat pumps may project not more than 5 feet into any minimum front yard or rear yard setback area. Any air conditioners or heat pumps existing within any minimum side yard setback area prior to \_\_\_\_\_, 2012 may be continued and replaced.**

**(e) The following building elements shall be included in the calculation of lot coverage and floor area ratio in accordance with the following table:**

<b><u>Element</u></b>	<b><u>Lot Coverage</u></b>	<b><u>Floor Area Ratio</u></b>
<b><u>Open and roofless steps, stoops, exterior stairways, and terraces</u></b>	<b><u>No</u></b>	<b><u>No</u></b>
<b><u>Open and roofed steps, stoops, exterior stairways, and terraces</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>
<b><u>Enclosed steps, stoops, exterior stairways, and terraces</u></b>	<b><u>Yes</u></b>	<b><u>Yes</u></b>
<b><u>Roofless and open porches and decks</u></b>	<b><u>No</u></b>	<b><u>No</u></b>
<b><u>Roofed open porches</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>
<b><u>Enclosed porches</u></b>	<b><u>Yes</u></b>	<b><u>Yes</u></b>
<b><u>Bay windows</u></b>	<b><u>Yes</u></b>	<b><u>Yes</u></b>
<b><u>Open, roofless entrance, vestibule or balcony</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>
<b><u>Open, roofed entrance, vestibule or balcony</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>
<b><u>Enclosed entrance, vestibule or balcony</u></b>	<b><u>Yes</u></b>	<b><u>Yes</u></b>
<b><u>Cornices, eaves, sills, leaders, belt courses, and similar ornamental features</u></b>	<b><u>No</u></b>	<b><u>No</u></b>
<b><u>Chimneys</u></b>	<b><u>Yes</u></b>	<b><u>Yes</u></b>
<b><u>Open, roofless fire escapes</u></b>	<b><u>No</u></b>	<b><u>No</u></b>
<b><u>Open, roofed fire escapes</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>
<b><u>Enclosed fire escapes</u></b>	<b><u>Yes</u></b>	<b><u>Yes</u></b>
<b><u>Air conditioners and heat pumps</u></b>	<b><u>No</u></b>	<b><u>No</u></b>

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### Section 403. Variances

(a) Purpose. It is the purpose of this Section to provide a procedure for a variance from the strict application of these building requirements in specific cases where the unusual dimensions, shape, topography, or other exceptional characteristics of a particular lot are such that the strict and literal enforcement of the Chapter would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship on, the owner of the property.

(b) Procedure

(1) Application. An application for a variance shall be made to the Council on a form provided by the Council, shall be accompanied by such plans, drawings, photographs and other documents as may be required by the Council and shall set forth the Section of this Chapter under which the building permit was denied, the basis for the claim of need for relief and the nature and extent of the relief sought.

(2) Public Hearing. On each application for a variance a public hearing shall be held and a written opinion made public.

(c) Conditions upon which relief may be predicated

(1) No variance shall be granted unless the Council finds, on the basis of the evidence of record that good cause has been shown on the following grounds for relief from the strict application of the building requirements.

(1.1) Because of the unusual dimensions, shape, topography or other exceptional characteristics of the lot, the lot cannot accommodate the building sought to be erected if the ~~[setback or lot coverage]~~ requirements of Section 402 are strictly applied to the construction and the strict and literal application of Section 402 to the lot would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship on, the owner of the property.

(1.1.1) The following conditions do not constitute hardship or difficulty as those terms are used herein:

1. Alleged violations of this Chapter by others;
2. The existence of nearby non-conforming uses;
3. The granting of a waiver or variance on other lots;
4. Any condition that results from the actions of the applicant; or
5. The existence of a building constructed in violation of this ~~[Section]~~ **Chapter**.

(1.1.2) If the alteration of the dwelling is required mainly as an aid to a disabled resident and no other reasonable feasible alternative is available, then the

practical difficulties standard of Section 403(c)(1.1) above shall be deemed to have been met.

(1.1.3) If the building(s) sought to be erected cover more than eighteen (18) per cent of the net lot area and if the net lot area is equal to or less than 8,600 square feet then the exceptional characteristics standard of Section 403(c)(1.1) above shall be deemed to have been met.

(1.2) When considering an application for a variance, the Council must consider these criteria:

**~~(1.2.1) the proposed new construction including existing structures and accessory buildings shall not exceed a floor area ratio (the ratio of floor area to lot area) of 0.375; and~~**

**(1.2.1)** The net lot area to be covered by buildings, including accessory buildings, **should** [shall] not exceed twenty (20) percent of the net lot area, unless the lot area is equal to or less than 8,600 square feet. If the lot area is equal to or less than 8,600 square feet, then the net lot area to be covered by buildings, including accessory buildings, shall not exceed 1,720 square feet or 25 per cent of the net lot area, whichever is less. Net lot area is defined as the total horizontal area included within the rear, side and front lot lines; and

**(1.2.2)] whether [A]** approval of the application for relief will be in harmony with the general purposes of this **~~[Ordinance]~~ Chapter** and will not be contrary to the public interest.

(2) Specific Conditions. In granting a variance, the Council shall permit the least departure from the requirements of this Chapter that will give relief to the applicant. The Council may attach such conditions to the grant of variance, as it considers necessary to accomplish the intent of Sections 402 and 403 of this Code.

(d) Exemptions

(1) Existing Buildings. An existing building which was lawful when established, but which no longer conforms to the

requirements of this Chapter because of the amendment of this Chapter, may continue as built and may be replaced or repaired, but may not be expanded, except to the extent that such expansion meets the requirements of this Chapter.

(2) Existing Building Permits. Construction for which a building permit was granted both by Montgomery County and by the Town before ~~[May 3, 1994]~~ \_\_\_\_\_, may proceed under the regulations and conditions that prevailed when the permits were granted provided, however, that any such construction that does not comply with the provisions of this Chapter shall have begun within ~~[twenty-four (24) months of May 3, 1994.]~~ \_\_\_\_\_ **months of** \_\_\_\_\_, \_\_\_\_\_.

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2012, by the Town Council of the Town of Garrett Park, acting under and by virtue of the authority granted to it by Articles 23A and 28 of the Maryland Code and the Town Charter, that:

(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This ordinance shall take effect on the \_\_\_\_ day of \_\_\_\_\_, 2012, or if a valid petition for a referendum as to this ordinance or any part hereof is filed pursuant to Section 78-15 of the Garrett Park Charter, this ordinance shall take effect upon approval of this ordinance, without any deletions, by the voters of Garrett Park.

ATTEST:

TOWN OF GARRETT PARK

\_\_\_\_\_  
Edwin Pratt, Jr., Clerk-Treasurer  
Town of Garrett Park

\_\_\_\_\_  
Peter Benjamin, Mayor  
Town of Garrett Park

**Bold and Underline** indicates new material

**~~Bold and Strikethrough~~** indicates material deleted

\* \* \* indicates material unchanged